

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1332 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SOMABHAI PARBATBHAI SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MR SK BUKHARI for appellant.

MR ST MEHTA APP for respondent No. 1

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/07/98

ORAL JUDGEMENT

1. Challenge in this criminal appeal is the judgment and order dated 30.10.1993 rendered in Special Atrocity Case No.11 of 1991 by the Special Judge, Bharuch whereby the learned Special Judge recorded finding of conviction of the appellant/accused for commission of offence punishable under Section 354 of the Indian Penal Code ('IPC' for short) and under Section 3 (1) (xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act' for short) and sentenced

him to suffer R.I. for six months and to pay fine of Rs.1000 and in default of payment of fine to undergo R.I. for further one month for the offence under Section 354 of IPC and for the offence under Section 3 (1) (xi) of the Act the appellant is sentenced to suffer R.I. for six months and to pay fine of Rs.1000 and in default of payment of fine to undergo R.I. for further month and also ordered to run both the sentence concurrently.

2. The brief facts giving rise to the present appeal are as follows:

2.1 The complainant Meliben, wife of Ranchhodbhai Mithabhai, aged about 35 years at the relevant time, was staying at Achhod village, Taluka Amod, District Bharuch, and doing agricultural labour work on the field. On 24.10.1990 she was doing labour work in the field and her husband Ranchhodbhai who was serving with Umarji Musa Gani had gone to serve at the house of Musa Gani. When the complainant Meliben was cutting grass at about 10 O'clock in the morning, the accused Somabhai Parbatbhai Solanki came from behind and without speaking anything with an intention to outrage her modesty, took her in his hands. As the complainant raised shouts said Somabhai set her free. The complainant frightened and ran away from the place of occurrence and went to the farm of Ahmed Haji Musa where her brother-in-law was working and told him about the incident and she went to her house. When her husband returned from the house of Musa Gani she informed him about the incident. Thereafter she lodged the complaint against same Somabhai Parbatbhai Solanki for commission of the alleged crime.

2.2 On the basis of the said complaint, offence was registered and the investigation was put in motion. Investigating officer recorded statement of various witnesses, drawn panchnama of the scene of occurrence and at the conclusion of the investigation the accused was charge-sheeted before the Special Court of Bharuch for the commission of offence under Section 354 of IPC and also under Section 3 (1) (xi) of the Act as the complainant belongs to Scheduled Tribe community.

2.3 The Special Court framed charge against the accused to which he pleaded not guilty and, therefore, he was tried.

2.4 The learned trial Judge recorded the evidence of the prosecutrix as well as other witnesses and after considering the documents produced before him, recorded the conviction as aforesaid. The said judgment and order

recording the conviction is in the anvil before this Court.

3. At the time of hearing of this appeal, learned advocate Mr. Bukhari for the appellant has submitted an application and pursis signed by the prosecutrix as well as the appellant Somabhai and sought permission to compound the matter under section 320 of the Criminal Procedure Code ('the Code' for short).

4. On having look at the aforesaid application as well as pursis it appears that compromise has been arrived at between the prosecutrix /complainant as well as the accused and the accused has also paid Rs.1000 by way of compensation to the prosecutrix and, therefore, the complainant sought permission to withdraw her complaint so far as the offence under Section 354 of IPC is concerned. Learned A.P.P. Mr. S.T. Mehta also admitted that the parties are ready and willing to compromise and by virtue of the powers conferred under Section 320 of the Code the matter can be compounded so far as the offence under Section 354 of IPC is concerned.

5. On having perusal of the said application as well as pursis and the statutory provisions envisaged under Section 320 (2) of the Code, offence under Section 354 can be compounded, with the permission of the Court, by the woman assaulted to whom the criminal force was applied. According to me, when amicable settlement is arrived at between the prosecutrix and accused/appellant and more particularly when the appellant has paid Rs.1000 by way of compensation there is no reason not to accede to the said joint request made by the prosecutrix as well as the appellant. Hence, the permission to compound the offence under section 354 of IPC, as prayed for, is granted. Under the circumstances, the appellant/accused is acquitted of the offence punishable under Section 354 of IPC.

6. Now remains the offence under Section 3 (1) (xi) of the Act. The allegation is that the prosecutrix belongs to Vasava community, a Scheduled Tribe community and, therefore, as per sub clause (xi) of sub-section (1) of Section 3 of the Act whoever not being a member of a Scheduled Caste or a Scheduled Tribe assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty shall be liable for punishment for a term which shall not be less than 6 months but may extend to 5 years and with fine. It may be appreciated that there was no documentary evidence before the learned Special Judge to

prove that the complainant belongs to a Scheduled Tribe community. On having look at the judgment it appears that the learned Special Judge has by relying upon the oral evidence of the complainant only came to the conclusion that she belongs to a scheduled tribe community and merely on the basis of the oral evidence the learned Special Judge recorded the conviction under the said Act. When the documents with respect to the caste of the complainant showing that the complainant belongs to scheduled tribe community was not forthcoming the conviction cannot be based merely on the oral evidence and hence the conviction recorded under the said Act is not sustainable and requires to be set aside. Under the circumstances, it is clear that the prosecution has not been able to prove the charge alleged against the appellant/accused in respect of commission of offence under section 3 (1) (xi) of the Act.

7. Resultantly, this appeal deserves to be allowed and, accordingly, it is allowed. Conviction recorded against the appellant under Section 354 of IPC as well as under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is set aside and the accused/appellant is acquitted of the offences with which he was charged. The amount of fine paid by the appellant/accused be refunded to him. The accused is on bail. Therefore, his bail bonds shall stand cancelled. Sureties are discharged.

8. The application and compromise pursis supported by affidavit of both the prosecutrix and appellant/accused be taken on record.

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